

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting filing of copy of notice of location of the Webb Bench No. 1 placer mining claim. AA 47887.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, must file in the proper BLM office, within 90 days after the location of such claim, a copy of the official record of the notice of location or certificate of location. Failure to file such instrument timely is deemed conclusively to constitute an abandonment of the mining claim by the owner, and it is properly declared void.

APPEARANCES: Sidney A. Webb, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Sidney A. Webb has appealed the July 21, 1982, decision of the Alaska State Office, Bureau of Land Management (BLM), rejecting as untimely the filing of a copy of the notice of location of the Webb Bench No. 1 placer mining claim. We affirm.

The administrative record shows that Webb located his claim on February 9, 1981, in sec. 15, T. 9 N., R. 2 W., Seward meridian, on unsurveyed Federal lands which, along with all of the surrounding township, lie entirely within the Chugach National Forest. From his allegations on appeal, we gather

that Webb visited BLM's office in Anchorage shortly afterwards to "file" his claim, but was informed by BLM that it should be filed with the State of Alaska. Webb, presumably following BLM's instructions, recorded an original notice of location in the Seward Recording District office, State of Alaska.

Although his claim was clearly located on Federal lands, Webb used a form prepared by the State of Alaska tailored to location of mining claims on state lands. <sup>1/</sup> The use of this form was not, by itself, incorrect; if Webb had filed a copy with BLM as required by 43 CFR 3833.1-2(b) (see below), for unpatented mining claims on Federal lands, he would have satisfied the pertinent Federal filing requirement. Unfortunately, however, the State's form contained the warning that a copy must be filed with the State's Division of Minerals and Energy Management (DMEM), the correct procedure for mining claims on state lands. Webb dutifully followed this procedure, thus misfiling the copy with the State's DMEM on April 27, 1981.

DMEM, operating with a substantial backlog, did not reach Webb's filing for nearly a year. On March 18, 1982, it advised Webb that his claim was on Federal lands and was not under the State's jurisdiction. It accordingly returned his filing to him with advice that it should be filed with BLM. Webb did so, filing it with BLM on April 30, 1982.

On July 21, 1982, BLM issued its decision rejecting Webb's filing, since he had not filed a copy of the notice of location until more than a year after the date of location, in violation of the 90-day time limit of 43 CFR 3833.1-2(b). Webb appealed.

[1] BLM's decision correctly applied the regulations and is affirmed. Under 43 CFR 3833.1-2(b) a copy of the notice of location for an unpatented mining claim located on Federal lands after October 21, 1976, must be filed with BLM within 90 days of the date of location. Appellant did not do so, and BLM properly rejected his filings.

Appellant asserts that BLM is responsible for the confusion that resulted in his misfiling his documents with the State. He alleges as follows: "After staking the claim, an attempt was made to file the same with the Bureau of Land Management in Anchorage. I was informed at that time that it should be filed with the State of Alaska." It is clear from appellant's chronology of events that he went to BLM before he had recorded the original notice of location.

The first step in the filing for record of any mining claim in a state which requires recordation of claims located on Federal lands is the recording of the original notice of location in the local recorder's office, which is a branch of state government. See 43 CFR 3833.1-2(b). In the

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<sup>1/</sup> The State of Alaska allows the location and perfection of mining claims on its own state lands. AS 38.05.195.

"lower 48," recordation is usually made in the county recorder's office; in Alaska, recordation is made in the appropriate state district recording office, there being no counties there. We surmise from his statement that BLM simply directed him to the local recorder's office, i.e. "the State," to take this first step.

Once appellant filed his original notice of location in the local recorder's office, he was then required by 43 CFR 3833.1-2(b) to file a copy of it with BLM as discussed above, since his claim was on Federal lands. Instead, appellant followed the procedure applicable to claims located on state lands. We are not convinced that BLM officials expressly advised appellant to take this latter, incorrect course. We think it likely, to the contrary, that BLM's advice to him was limited to directing him to the Seward District Recorder to file the original notice of location. He evidently presumed that no Federal filing was required, despite the fact that his claim was clearly on Federal lands, and subsequently misfiled the copy of the notice of location with the State's DMEM. The blame for the resulting delay in getting the filing to BLM, where it belonged, must ultimately be traced to appellant, not to BLM, since he bore the responsibility of ascertaining the steps required to perfect and preserve his property interest.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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C. Randall Grant, Jr.  
Administrative Judge